

SECOND REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 793

95TH GENERAL ASSEMBLY

2010

4230S.08T

AN ACT

To repeal sections 188.027, 188.039, and 376.805, RSMo, and to enact in lieu thereof four new sections relating to abortion, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 188.027, 188.039, and 376.805, RSMo, are repealed
2 and four new sections enacted in lieu thereof, to be known as sections 188.027,
3 188.039, 334.245, and 376.805, to read as follows:

188.027. 1. **Except in the case of medical emergency**, no abortion
2 shall be performed [except with the prior, informed and written consent freely
3 given of the pregnant woman.] **or induced on a woman without her
4 voluntary and informed consent, given freely and without
5 coercion. Consent to an abortion is voluntary and informed and given
6 freely and without coercion, if and only if, at least twenty-four hours
7 prior to the abortion:**

8 (1) **The physician who is to perform or induce the abortion or a
9 qualified professional has informed the woman, orally, reduced to
10 writing, and in person, of the following:**

11 (a) **The name of the physician who will perform or induce the
12 abortion;**

13 (b) **Medically accurate information that a reasonable patient
14 would consider material to the decision of whether or not to undergo
15 the abortion, including:**

16 a. **A description of the proposed abortion method;**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 **b. The immediate and long-term medical risks to the woman**
18 **associated with the proposed abortion method including, but not**
19 **limited to, infection, hemorrhage, cervical tear or uterine perforation,**
20 **harm to subsequent pregnancies or the ability to carry a subsequent**
21 **child to term, and possible adverse psychological effects associated**
22 **with the abortion; and**

23 **c. The immediate and long-term medical risks to the woman, in**
24 **light of the anesthesia and medication that is to be administered, the**
25 **unborn child's gestational age, and the woman's medical history and**
26 **medical condition;**

27 **(c) Alternatives to the abortion which shall include making the**
28 **woman aware that information and materials shall be provided to her**
29 **detailing such alternatives to the abortion;**

30 **(d) A statement that the physician performing or inducing the**
31 **abortion is available for any questions concerning the abortion,**
32 **together with the telephone number that the physician may be later**
33 **reached to answer any questions that the woman may have;**

34 **(e) The location of the hospital that offers obstetrical or**
35 **gynecological care located within thirty miles of the location where the**
36 **abortion is performed or induced and at which the physician**
37 **performing or inducing the abortion has clinical privileges and where**
38 **the woman may receive follow-up care by the physician if complications**
39 **arise;**

40 **(f) The gestational age of the unborn child at the time the**
41 **abortion is to be performed or induced; and**

42 **(g) The anatomical and physiological characteristics of the**
43 **unborn child at the time the abortion is to be performed or induced;**

44 **(2) The physician who is to perform or induce the abortion or a**
45 **qualified professional has presented the woman, in person, printed**
46 **materials provided by the department, which describe the probable**
47 **anatomical and physiological characteristics of the unborn child at two-**
48 **week gestational increments from conception to full term, including**
49 **color photographs or images of the developing unborn child at two-**
50 **week gestational increments. Such descriptions shall include**
51 **information about brain and heart functions, the presence of external**
52 **members and internal organs during the applicable stages of**
53 **development and information on when the unborn child is viable. The**
54 **printed materials shall prominently display the following statement:**

55 "The life of each human being begins at conception. Abortion will
56 terminate the life of a separate, unique, living human being.";

57 (3) The physician who is to perform or induce the abortion or a
58 qualified professional has presented the woman, in person, printed
59 materials provided by the department, which describe the various
60 surgical and drug-induced methods of abortion relevant to the stage of
61 pregnancy, as well as the immediate and long-term medical risks
62 commonly associated with each abortion method including, but not
63 limited to, infection, hemorrhage, cervical tear or uterine perforation,
64 harm to subsequent pregnancies or the ability to carry a subsequent
65 child to term, and the possible adverse psychological effects associated
66 with an abortion;

67 (4) The physician who is to perform or induce the abortion or a
68 qualified professional shall provide the woman with the opportunity to
69 view at least twenty-four hours prior to the abortion an active
70 ultrasound of the unborn child and hear the heartbeat of the unborn
71 child if the heartbeat is audible. The woman shall be provided with a
72 geographically indexed list maintained by the department of health
73 care providers, facilities, and clinics that perform ultrasounds,
74 including those that offer ultrasound services free of charge. Such
75 materials shall provide contact information for each provider, facility,
76 or clinic including telephone numbers and, if available, web site
77 addresses. Should the woman decide to obtain an ultrasound from a
78 provider, facility, or clinic other than the abortion facility, the woman
79 shall be offered a reasonable time to obtain the ultrasound examination
80 before the date and time set for performing or inducing an
81 abortion. The person conducting the ultrasound shall ensure that the
82 active ultrasound image is of a quality consistent with standard
83 medical practice in the community, contains the dimensions of the
84 unborn child, and accurately portrays the presence of external
85 members and internal organs, if present or viewable, of the unborn
86 child. The auscultation of fetal heart tone must also be of a quality
87 consistent with standard medical practice in the community. If the
88 woman chooses to view the ultrasound or hear the heartbeat or both at
89 the abortion facility, the viewing or hearing or both shall be provided
90 to her at the abortion facility at least twenty-four hours prior to the
91 abortion being performed or induced;

92 (5) Prior to an abortion being performed or induced on an

93 unborn child of twenty-two weeks gestational age or older, the
94 physician who is to perform or induce the abortion or a qualified
95 professional has presented the woman, in person, printed materials
96 provided by the department that offer information on the possibility of
97 the abortion causing pain to the unborn child. This information shall
98 include, but need not be limited to, the following:

99 (a) At least by twenty-two weeks of gestational age, the unborn
100 child possesses all the anatomical structures, including pain receptors,
101 spinal cord, nerve tracts, thalamus, and cortex, that are necessary in
102 order to feel pain;

103 (b) A description of the actual steps in the abortion procedure
104 to be performed or induced, and at which steps the abortion procedure
105 could be painful to the unborn child;

106 (c) There is evidence that by twenty-two weeks of gestational
107 age, unborn children seek to evade certain stimuli in a manner that in
108 an infant or an adult would be interpreted as a response to pain;

109 (d) Anesthesia is given to unborn children who are twenty-two
110 weeks or more gestational age who undergo prenatal surgery;

111 (e) Anesthesia is given to premature children who are twenty-
112 two weeks or more gestational age who undergo surgery;

113 (f) Anesthesia or an analgesic is available in order to minimize
114 or alleviate the pain to the unborn child;

115 (6) The physician who is to perform or induce the abortion or a
116 qualified professional has presented the woman, in person, printed
117 materials provided by the department explaining to the woman
118 alternatives to abortion she may wish to consider. Such materials shall:

119 (a) Identify on a geographical basis public and private agencies
120 available to assist a woman in carrying her unborn child to term, and
121 to assist her in caring for her dependent child or placing her child for
122 adoption, including agencies commonly known and generally referred
123 to as pregnancy resource centers, crisis pregnancy centers, maternity
124 homes, and adoption agencies. Such materials shall provide a
125 comprehensive list by geographical area of the agencies, a description
126 of the services they offer, and the telephone numbers and addresses of
127 the agencies; provided that such materials shall not include any
128 programs, services, organizations, or affiliates of organizations, that
129 perform or induce, or assist in the performing or inducing, of abortions
130 or that refer for abortions;

131 **(b) Explain the Missouri alternatives to abortion services**
132 **program under section 188.325, and any other programs and services**
133 **available to pregnant women and mothers of newborn children offered**
134 **by public or private agencies which assist a woman in carrying her**
135 **unborn child to term and assist her in caring for her dependent child**
136 **or placing her child for adoption, including, but not limited to prenatal**
137 **care; maternal health care; newborn or infant care; mental health**
138 **services; professional counseling services; housing programs; utility**
139 **assistance; transportation services; food, clothing, and supplies related**
140 **to pregnancy; parenting skills; educational programs; job training and**
141 **placement services; drug and alcohol testing and treatment; and**
142 **adoption assistance;**

143 **(c) Identify the state web site for the Missouri alternatives to**
144 **abortion services program under section 188.325, and any toll-free**
145 **number established by the state operated in conjunction with the**
146 **program;**

147 **(d) Prominently display the statement: "There are public and**
148 **private agencies willing and able to help you carry your child to term,**
149 **and to assist you and your child after your child is born, whether you**
150 **choose to keep your child or place him or her for adoption. The state**
151 **of Missouri encourages you to contact those agencies before making a**
152 **final decision about abortion. State law requires that your physician**
153 **or a qualified professional give you the opportunity to call agencies**
154 **like these before you undergo an abortion.";**

155 **(7) The physician who is to perform or induce the abortion or a**
156 **qualified professional has presented the woman, in person, printed**
157 **materials provided by the department explaining that the father of the**
158 **unborn child is liable to assist in the support of the child, even in**
159 **instances where he has offered to pay for the abortion. Such materials**
160 **shall include information on the legal duties and support obligations**
161 **of the father of a child, including, but not limited to, child support**
162 **payments, and the fact that paternity may be established by the father's**
163 **name on a birth certificate or statement of paternity, or by court**
164 **action. Such printed materials shall also state that more information**
165 **concerning paternity establishment and child support services and**
166 **enforcement may be obtained by calling the family support division**
167 **within the Missouri department of social services; and**

168 **(8) The physician who is to perform or induce the abortion or a**

169 qualified professional shall inform the woman that she is free to
170 withhold or withdraw her consent to the abortion at any time without
171 affecting her right to future care or treatment and without the loss of
172 any state or federally funded benefits to which she might otherwise be
173 entitled.

174 2. All information required to be provided to a woman
175 considering abortion by subsection 1 of this section shall be presented
176 to the woman individually, in the physical presence of the woman and
177 in a private room, to protect her privacy, to maintain the
178 confidentiality of her decision, to ensure that the information focuses
179 on her individual circumstances, to ensure she has an adequate
180 opportunity to ask questions, and to ensure that she is not a victim of
181 coerced abortion. Should a woman be unable to read materials
182 provided to her, they shall be read to her. Should a woman need an
183 interpreter to understand the information presented in the written
184 materials, an interpreter shall be provided to her. Should a woman ask
185 questions concerning any of the information or materials, answers shall
186 be provided in a language she can understand.

187 3. No abortion shall be performed or induced unless and until
188 the woman upon whom the abortion is to be performed or induced
189 certifies in writing on a checklist form provided by the department that
190 she has been presented all the information required in subsection 1 of
191 this section, that she has been provided the opportunity to view an
192 active ultrasound image of the unborn child and hear the heartbeat of
193 the unborn child if it is audible, and that she further certifies that she
194 gives her voluntary and informed consent, freely and without coercion,
195 to the abortion procedure.

196 4. No abortion shall be performed or induced on an unborn child
197 of twenty-two weeks gestational age or older unless and until the
198 woman upon whom the abortion is to be performed or induced has been
199 provided the opportunity to choose to have an anesthetic or analgesic
200 administered to eliminate or alleviate pain to the unborn child caused
201 by the particular method of abortion to be performed or induced. The
202 administration of anesthesia or analgesics shall be performed in a
203 manner consistent with standard medical practice in the community.

204 5. No physician shall perform or induce an abortion unless and
205 until the physician has obtained from the woman her voluntary and
206 informed consent given freely and without coercion. If the physician

207 has reason to believe that the woman is being coerced into having an
208 abortion, the physician or qualified professional shall inform the
209 woman that services are available for her and shall provide her with
210 private access to a telephone and information about such services,
211 including but not limited to the following:

212 (1) Rape crisis centers, as defined in section 455.003;

213 (2) Shelters for victims of domestic violence, as defined in
214 section 455.200; and

215 (3) Orders of protection, pursuant to chapter 455.

216 6. No physician shall perform or induce an abortion unless and
217 until the physician has received and signed a copy of the form
218 prescribed in subsection 3 of this section. The physician shall retain
219 a copy of the form in the patient's medical record.

220 7. In the event of a medical emergency as provided by section
221 188.075, the physician who performed or induced the abortion shall
222 clearly certify in writing the nature and circumstances of the medical
223 emergency. This certification shall be signed by the physician who
224 performed or induced the abortion, and shall be maintained under
225 section 188.060.

226 8. No person or entity shall require, obtain, or accept payment
227 for an abortion from or on behalf of a patient until at least twenty-four
228 hours has passed since the time that the information required by
229 subsection 1 has been provided to the patient. Nothing in this
230 subsection shall prohibit a person or entity from notifying the patient
231 that payment for the abortion will be required after the twenty-four-
232 hour period has expired if she voluntarily chooses to have the abortion.

233 9. The term "qualified professional" as used in this section shall
234 refer to a physician, physician assistant, registered nurse, licensed
235 practical nurse, psychologist, licensed professional counselor, or
236 licensed social worker, licensed or registered under chapter 334, 335,
237 or 337, acting under the supervision of the physician performing or
238 inducing the abortion, and acting within the course and scope of his or
239 her authority provided by law. The provisions of this section shall not
240 be construed to in any way expand the authority otherwise provided by
241 law relating to the licensure, registration, or scope of practice of any
242 such qualified professional.

243 10. By November 30, 2010, the department shall produce the
244 written materials and forms described in this section. Any written

245 materials produced shall be printed in a typeface large enough to be
246 clearly legible. All information shall be presented in an objective,
247 unbiased manner designed to convey only accurate scientific and
248 medical information. The department shall furnish the written
249 materials and forms at no cost and in sufficient quantity to any person
250 who performs or induces abortions, or to any hospital or facility that
251 provides abortions. The department shall make all information
252 required by subsection 1 of this section available to the public through
253 its department web site. The department shall maintain a toll-free,
254 twenty-four-hour hotline telephone number where a caller can obtain
255 information on a regional basis concerning the agencies and services
256 described in subsection 1 of this section. No identifying information
257 regarding persons who use the web site shall be collected or
258 maintained. The department shall monitor the web site on a regular
259 basis to prevent tampering and correct any operational deficiencies.

260 11. In order to preserve the compelling interest of the state to
261 ensure that the choice to consent to an abortion is voluntary and
262 informed, and given freely and without coercion, the department shall
263 use the procedures for adoption of emergency rules under section
264 536.025 in order to promulgate all necessary rules, forms, and other
265 necessary material to implement this section by November 30, 2010.

188.039. 1. For purposes of this section, "medical emergency" means a
2 condition which, on the basis of the physician's good faith clinical judgment, so
3 complicates the medical condition of a pregnant woman as to necessitate the
4 immediate abortion of her pregnancy to avert her death or for which a delay will
5 create a serious risk of substantial and irreversible impairment of a major bodily
6 function.

7 2. Except in the case of medical emergency, no person shall perform or
8 induce an abortion unless at least twenty-four hours prior thereto [a treating
9 physician] **the physician who is to perform or induce the abortion or a**
10 **qualified professional** has conferred with the patient and discussed with her
11 the indicators and contraindicators, and risk factors including any physical,
12 psychological, or situational factors for the proposed procedure and the use of
13 medications, including but not limited to mifepristone, in light of her medical
14 history and medical condition. For an abortion performed or an abortion induced
15 by a drug or drugs, such conference shall take place at least twenty-four hours
16 prior to the writing or communication of the first prescription for such drug or
17 drugs in connection with inducing an abortion. Only one such conference shall

18 be required for each abortion.

19 3. The patient shall be evaluated by [a treating physician] **the physician**
20 **who is to perform or induce the abortion or a qualified professional**
21 during the conference for indicators and contraindicators, risk factors including
22 any physical, psychological, or situational factors which would predispose the
23 patient to or increase the risk of experiencing one or more adverse physical,
24 emotional, or other health reactions to the proposed procedure or drug or drugs
25 in either the short or long term as compared with women who do not possess such
26 risk factors.

27 4. At the end of the conference, and if the woman chooses to proceed with
28 the abortion, [a treating physician] **the physician who is to perform or**
29 **induce the abortion or a qualified professional** shall sign and shall cause
30 the patient to sign a written statement that the woman gave her informed
31 consent freely and without coercion after the physician **or qualified**
32 **professional** had discussed with her the indicators and contraindicators, and
33 risk factors, including any physical, psychological, or situational factors. All such
34 executed statements shall be maintained as part of the patient's medical file,
35 subject to the confidentiality laws and rules of this state.

36 5. The director of the department of health and senior services shall
37 disseminate a model form that physicians **or qualified professionals** may use
38 as the written statement required by this section, but any lack or unavailability
39 of such a model form shall not affect the duties of the physician **or qualified**
40 **professional** set forth in subsections 2 to 4 of this section.

41 6. **As used in this section, the term "qualified professional" shall**
42 **refer to a physician, physician assistant, registered nurse, licensed**
43 **practical nurse, psychologist, licensed professional counselor, or**
44 **licensed social worker, licensed or registered under chapter 334, 335,**
45 **or 337, acting under the supervision of the physician performing or**
46 **inducing the abortion, and acting within the course and scope of his or**
47 **her authority provided by law. The provisions of this section shall not**
48 **be construed to in any way expand the authority otherwise provided by**
49 **law relating to the licensure, registration, or scope of practice of any**
50 **such qualified professional.**

 334.245. 1. **Notwithstanding any other provision of law to the**
2 **contrary that may allow a person to provide services relating to**
3 **pregnancy, including prenatal, delivery, and postpartum services, no**
4 **person other than a licensed physician is authorized to perform or**
5 **induce an abortion.**

6 **2. Any person who violates the provisions of this section is guilty**
7 **of a class B felony.**

 376.805. 1. No health insurance contracts, plans, or policies delivered or
2 issued for delivery in the state shall provide coverage for elective abortions except
3 by an optional rider for which there must be paid an additional premium. For
4 purposes of this section, an "elective abortion" means an abortion for any reason
5 other than a spontaneous abortion or to prevent the death of the female upon
6 whom the abortion is performed.

7 **2. Subsection 1 of this section shall be applicable to all contracts, plans**
8 **or policies of:**

9 (1) All health insurers subject to this chapter; and

10 (2) All nonprofit hospital, medical, surgical, dental, and health service
11 corporations subject to chapter 354, RSMo; and

12 (3) All health maintenance organizations.

13 **3. No health insurance exchange established within this state or**
14 **any health insurance exchange administered by the federal government**
15 **or its agencies within this state shall offer health insurance contracts,**
16 **plans, or policies that provide coverage for elective abortions, nor shall**
17 **any health insurance exchange operating within this state offer**
18 **coverage for elective abortions through the purchase of an optional**
19 **rider.**

20 **4. This section shall be applicable only to contracts, plans or policies**
21 **written, issued, renewed or revised, after September 28, 1983. For the purposes**
22 **of this subsection, if new premiums are charged for a contract, plan or policy, it**
23 **shall be determined to be a new contract, plan or policy.**

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